



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 31, 1994

Ms. Cynthia N. Milne
General Counsel
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR94-720

Dear Ms. Milne:

The Texas Department of Criminal Justice (the "department") asks whether exhibits to certain contracts are subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The department contends that the requested information is protected by section 552.104 of the Government Code. This request was assigned ID# 27830.

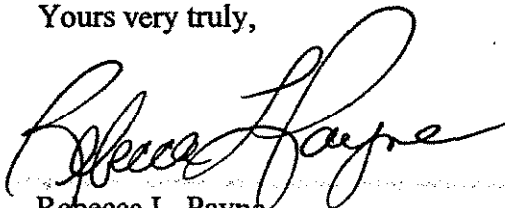
According to your letter of July 26, 1994, the department received the request for this information under the Open Records Act on July 12, 1994. However, it did not request a decision from this office until July 26, 1994. Consequently, the department failed to request a decision within the ten days required by section 552.301(a) of the Government Code.

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App. - Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App. - Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. See *Hancock* at 381; Open Records Decision No. 150 (1977) (presumption overcome by a showing that the information is made confidential by another source of law or affects third party interests).

On September 1, 1994, we asked you for copies of the records at issue and the reasons you believe the requested information is excepted from disclosure. To date, we have not received the requested copies or your arguments for withholding the information. Consequently, we find that the department has not met its burden under sections 552.301 - 552.303 of the act and has not shown compelling reasons why the information at issue should be withheld from the public.¹ The information is presumed to be public. In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, the department must release the information in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Rebecca L. Payne
Section Chief
Open Government Section

MAR/RWP/sbm

Ref.: ID# 27830

cc: Ms. Lisa Sumner
Interface Consulting International, Inc.
11767 Katy Freeway, Suite 1000
Houston, Texas 77079

¹Because section 552.104 is designed to protect the interests of the governmental body, rather than the interests of private parties that submit information to the government, the protection of section 552.104 can be waived. See Open Records Decision No. 592 (1991) at 8. Since the department failed to request a decision from this office within the required ten-day period, it has waived any protection that section 552.104 may have provided this information.